

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AM/NS CALVERT, LLC

and

Cases 15-CA-244523
15-CB-244598

AUSTIN SEAMANDS

and

UNITED STEEL, PAPER, AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION

ORDER DENYING MOTION

On September 30, 2020, the Regional Director for Region 15 of the National Labor Relations Board (the Regional Director) issued a Complaint and Notice of Hearing in Case No. 15-CA-244523 and, on November 4, 2020, a Complaint and Notice of Hearing in Case No. 15-CB-244598. On December 3, 2020, the Regional Director issued an Order Consolidating Cases for Hearing and Notice of Hearing.

On January 21, 2021, Respondent AM/NS Calvert, LLC (the Respondent) filed a Motion to Transfer Proceedings to the Board and for Summary Judgment. On January 28, 2021, the Regional Director issued separate Orders Withdrawing Complaint and Notice of Hearing in Case Nos. 15-CA-244523 and 15-CB-244598. On January 29, 2021, the Deputy Executive Secretary of the Board, by letter, notified the Respondent that, because the Regional Director withdrew the complaints, its Motion to Transfer Proceedings to the Board and for Summary Judgment was moot and would “not be considered by the Board.”

On January 29, 2021, the Respondent filed an Emergency Motion to Strike or Vacate the Regional Director's January 28, 2021 Orders. On February 1, 2021, the Regional Director issued separate dismissal letters of the charges in which she explained her reasons for dismissing them. On February 2, 2021, Counsel for the General Counsel filed an Opposition to the Respondent's emergency motion. On February 3, 2021, the Deputy Executive Secretary of the Board, by letter, notified the Respondent that, because a Regional Director retains the prosecutorial authority to withdraw or dismiss a complaint prior to a hearing without the Board's approval, the Respondent's emergency motion was not properly before the Board and no further action would be taken with respect to it.

On February 3, 2021, the Respondent filed a Motion to Clarify the Status of Employer Respondent's Motion for Summary Judgment and for a Section 102.24(b) Notice to Show Cause. The Respondent asserts that Section 102.18 of the Board's Rules and Regulations permits a Regional Director to withdraw a complaint only upon the filing of a motion and, in tandem with Section 102.24(a), said motion must be filed with the Board. The Respondent avers that the Regional Director failed to effectuate a withdrawal of the complaints because she did not file the required motion with the Board and obtain the Board's approval for the withdrawal.

However, the Respondent misreads the relevant provisions of Section 102.18 and 102.24(a). Under Section 102.18, the Regional Director has the prosecutorial discretion to withdraw a complaint *sua sponte* at any time before the hearing and the exercise of that authority is not subject to Board review. See *NLRB v. UFCW, Local 23, AFL-CIO*, 484 U.S. 112, 119 (1987) ("The regional director is authorized to withdraw a

complaint on his own motion at any time before the hearing. Such a withdrawal may be appealed to the General Counsel, but no Board review is available.”); *Olympia Fields Osteopathic Center*, 278 NLRB 853 (1986) (where the complaint is in a prehearing posture the “Regional Director acting on behalf of the General Counsel may withdraw the complaint on his own motion”). Moreover, Section 102.24(a) pertains to a party other than the regional director filing a motion for dismissal with the Board prior to the hearing. Because the Regional Director’s withdrawal of the complaints in this case prior to the hearing was specifically authorized by Section 102.18, the Respondent’s Motion for Summary Judgment is moot.

The Board having considered the matter,

IT IS ORDERED that the Motion to Clarify the Status of Employer Respondent’s Motion for Summary Judgment and for a Section 102.24(b) Notice to Show Cause is denied.

Dated, Washington D.C., Dated February 19, 2021.

By direction of the Board:

Roxanne L. Rothschild
Executive Secretary